

the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(f) *Mailing of refund check.* (1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in subparagraph (2) of this paragraph (f), the checks may be sent direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see section 3477 of the Revised Statutes (31 U.S.C. 203).

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7008, 34 FR 3673, Mar. 1, 1969; T.D. 7188, 37 FR 12794, June 29, 1972; T.D. 7410, 41 FR 11020, Mar. 16, 1976; T.D. ATF-33, 41 FR 44038, Oct. 6, 1976; T.D. 7484, 42 FR 22143, May 2, 1977]

**§ 301.6402-3 Special rules applicable to income tax.**

(a) In the case of a claim for credit or refund filed after June 30, 1976—

(1) In general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.

(2) In the case of an overpayment of income taxes for a taxable year of an individual for which a Form 1040 or 1040A has been filed, a claim for refund shall be made on Form 1040X (“Amended U.S. Individual Income Tax Return”).

(3) In the case of an overpayment of income taxes for a taxable year of a corporation for which a Form 1120 has been filed, a claim for refund shall be made on Form 1120X (“Amended U.S. Corporation Income Tax Return”).

(4) In the case of an overpayment of income taxes for a taxable year for which a form other than Form 1040,

1040A, or 1120 was filed (such as Form 1041 (U.S. Fiduciary Income Tax Return) or Form 990T (Exempt Organization Business Income Tax Return)), a claim for credit or refund shall be made on the appropriate amended income tax return.

(5) A properly executed individual, fiduciary, or corporation original income tax return or an amended return (on 1040X or 1120X if applicable) shall constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return (or amended return). For purposes of section 6511, such claim shall be considered as filed on the date on which such return (or amended return) is considered as filed, except that if the requirements of § 301.7502-1, relating to timely mailing treated as timely filing are met, the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return (or amended return) was mailed. A return or amended return shall constitute a claim for refund or credit if it contains a statement setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return (or amended return) is filed. If the taxpayer indicates on its return (or amended return) that all or part of the overpayment shown by its return (or amended return) is to be applied to its estimated income tax for its succeeding taxable year, such indication shall constitute an election to so apply such overpayment, and no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year or the installments thereof.

(6) Notwithstanding paragraph (a)(5) of this section, the Internal Revenue Service, within the applicable period of limitations, may credit any overpayment of individual, fiduciary, or corporation income tax, including interest thereon, against—

(i) First, any outstanding liability for any tax (or for any interest, additional amount, additions to the tax, or assessable penalty) owed by the taxpayer making the overpayment;

(ii) Second, in the case of an individual taxpayer, amounts of past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act under procedures set forth in the regulations under section 6402(c);

(iii) Third, past-due and legally enforceable debt under procedures set forth in the regulations under section 6402(d); and

(iv) Fourth, qualifying amounts of past-due support not assigned to a State under procedures set forth in the regulations under section 6402(c).

Only the balance, if any, of the overpayment remaining after credits described in this paragraph (a)(6) shall be treated in the manner so elected.

(b) In the case of a claim for credit or refund filed before July 1, 1976—

(1) In the case of income tax, claims for refund may not only be made on Form 843 but may also be made on any individual, fiduciary, or corporation income tax return, or on any amended income tax return.

(2) In the case of an overpayment for a taxable year of an individual for which a Form 1040 or Form 1040A has been filed, claim for refund may be made on Form 1040X ("Amended U.S. Individual Income Tax Return"). In cases to which this subparagraph applies, the taxpayer is encouraged to use Form 1040X.

(3) In the case of an overpayment for a taxable year of a corporation for which a corporation tax return has been filed, claim for refund may be made on Form 1120X ("Amended U.S. Corporation Income Tax Return"). In cases to which this subparagraph applies, the taxpayer is encouraged to use Form 1120X.

(4) A properly executed individual, fiduciary, or corporation income tax return shall, at the election of the taxpayer, constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return. For purposes of section 6511, such claim shall be considered as filed on

the date on which such return is considered as filed, except that if the requirements of § 301.7502-1, relating to timely mailing treated as timely filing, are met the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return was mailed.

(5) An election to treat the return as a claim for refund or credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return is filed. If the taxpayer elects to have all or part of the overpayment shown by his return applied to his estimated income tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year or the installments thereof.

(6) Notwithstanding elections made under paragraph (b)(5) of this section for taxable years ending after December 20, 1972, the Commissioner, within the applicable period of limitations, may credit any overpayment of individual, fiduciary, or corporation income tax, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the taxpayer making the overpayment, and only the balance, if any, shall be treated in the manner so elected.

(c) The filing of a properly executed income tax return shall, in any case in which the taxpayer is not required to show his tax on such form (see section 6014 and the regulations thereunder), be treated as a claim for refund (or for claims filed before July 1, 1976, constitute an election by the taxpayer to have the return treated as a claim for refund), and such return shall constitute a claim for refund within the meaning of section 6402 and section 6511 for the amount of the overpayment shown by the computation of the tax made by the district director or the director of the regional service center on the basis of the return. For purposes of

section 6511, such claim shall be considered as filed on the date on which such return is considered as filed, except that if the requirements of § 301.7502-1, relating to timely mailing treated as timely filing, are met the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return was mailed.

(d) In any case in which a taxpayer elects to have an overpayment refunded to him he may not thereafter change his election to have the overpayment applied as a payment on account of his estimated income tax.

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapter 3 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Code, a copy of the Form 1042-S required to be provided to the beneficial owner pursuant to § 1.1461-1(c)(1)(i) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042-S must include the taxpayer identifying number of the beneficial owner even if not otherwise required. No claim of refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to § 1.1461-2(a)(2) of this chapter, that was subject to a set-off pursuant to § 1.1461-2(a)(3) of this chapter, or in accordance with the provisions of an agreement that a qualified intermediary described in § 1.1441-1(e)(5)(ii) has in effect with the Internal Revenue Service. Upon request, a taxpayer must also submit such documentation as the Commissioner (or delegate), the District Director, or the Assistant Commissioner (International), may require establishing that the taxpayer is the beneficial owner of the income for

which a claim of refund or credit is being made.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7102, 36 FR 5498, Mar. 24, 1971; T.D. 7234, 37 FR 28163, Dec. 21, 1972; T.D. 7293, 38 FR 32804, Nov. 28, 1973; T.D. 7298, 38 FR 35234, Dec. 26, 1973; T.D. 7410, 41 FR 11020, Mar. 16, 1976; T.D. 7808, 47 FR 5714, Feb. 8, 1982; T.D. 8053, 50 FR 39662, Sept. 30, 1985; T.D. 8734, 62 FR 53495, Oct. 14, 1997]

**§ 301.6402-4 Payments in excess of amounts shown on return.**

In certain cases, the taxpayer's payments in respect of his tax liability, made before the filing of his return, may exceed the amount of tax shown on the return. For example, such payments may arise in the case of the income tax when the estimated tax or the credit for income tax withheld at the source on wages exceeds the amount of tax shown on the return, or where a corporation obtains an extension of time for filing its return and makes installment payments based on its estimate of its tax liability which exceed the tax liability shown on the return subsequently filed. In any case in which the district director or the director of the regional service center determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, he may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of §§ 301.6402-2 and 301.6402-3 are applicable to such overpayment, and taxpayers should submit claims for refund (if the income tax return is not itself a claim for refund, as provided in § 301.6402-3) to protect themselves in the event the district director or the director of the regional service center fails to make such determination and credit or refund. The provisions of section 6405 (relating to reports of refunds of more than \$100,000 to the Joint Committee on Internal Revenue Taxation) are not applicable to the overpayments described in this section caused by timely payments of tax which exceed the amount of tax shown on a timely return.